

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on February 13, 2003 at 9:02 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 292, 1/30/2003; SB 304,
1/31/2003
Executive Action: SB 273; SB 292

{Tape: 1; Side: A}

HEARING ON SB 292

Sponsor: SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA

Proponents: Matthew Fisher, Residence Life Office, University of Montana, Missoula; Bill Johnston, Montana University System

Opponents: None

Opening Statement by Sponsor:

SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA, stated this simple bill makes it clear in the law that university system housing is not subject to landlord-tenant provisions of the law. There is no typical landlord-tenant relationship that exists; therefore, all the definitions cannot apply. There are many aspects of the landlord-tenant law that just don't fit. She would have an amendment put on the bill on line 14, where it says, "including all student housing," because there is other housing provided to faculty and other kinds of renters.

Proponents' Testimony:

Matthew Fisher, Residence Life Office, University of Montana, said his office runs the on-campus dormitories as well as the off-campus married students and graduate housing in Missoula. He expressed they are in favor of the bill due to the fact it allows them, as a university department, to remove those individuals who are no longer attending the University of Montana. There was never an intent that those people no longer attending the university be allowed to remain in university housing. This bill would allow them to remove those individuals. He spoke of the due process those individuals would have should they choose to appeal.

Bill Johnston, Montana University System, rose in support of the bill and thanked SEN. COCCHIARELLA for bringing the bill before the legislature. They have been exempt as part of their on-campus housing, but they felt that a number of off-campus facilities needed clarification.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked Mr. Johnston about line 16 regarding occupancy. The university owns several off-campus buildings according to Mr. Johnston. SEN. COCCHIARELLA and Eddy McClure

advised **SEN. SPRAGUE** that it is strictly a technical correction to the bill.

Closing by Sponsor:

SEN. COCCHIARELLA closed on the bill.

HEARING ON SB 304

Sponsor: SENATOR ROYAL JOHNSON, SD 5, BILLINGS

Proponents: Chuck Swysgood, Budget Director, Governor's Office; Jerry Driscoll, AFL/CIO; Sue Weingartner, Alliance of American Insurers; Charles Brooks, Billings Chamber of Commerce; Aidan Myhre, Montana Chamber of Commerce

Opponents: Matthew Cohn, Montana State Fund; Roger McGlenn, Independent Insurance Agents Association of Montana; Jacqueline Lenmark, American Insurance Association

Opening Statement by Sponsor:

SENATOR ROYAL JOHNSON, SD 5, BILLINGS, brought before the committee a bill he thought extremely necessary. It was the result of work done at the end of last session and was followed up by the governor's office after what happened at the State Fund in December. The bill only requires the set up of this particular committee. He submitted amendments to the bill, **EXHIBIT (bus32a01)** (SB030401.agp), a letter from Employers Insurance Company of Nevada regarding the privatization of their state's work comp industry, **EXHIBIT (bus32a02)**, a letter from Michigan's Accident Fund, **EXHIBIT (bus32a03)**, and a draft of this bill's fiscal note, **EXHIBIT (bus32a04)**. **SEN. JOHNSON** thought a lot of the people in Montana would like a closer look at the State Fund. The legislature is the elected body who is supposed to do just that. What he wants to do is find out what is happening over there. Their board has no obligation to report to anybody. This is a board appointed by the governor and she should have the right to take a look at what is going on. He didn't know if this study would do anything, but it is time to look and see.

Proponents' Testimony:

Chuck Swysgood, Budget Director, Governor's Office, stated that when **SEN. JOHNSON** brought this bill forward with the feasibility of doing a study, it had the governor's office as the agency that was going to do the study. After a great deal of discussion, they asked **SEN. JOHNSON** to have the legislature do it; because the legislature created this entity, and they should have that say if something changes in relationship to the State Fund. Having had experience going back to 1987 and knowledge of the condition of the State Fund at that time, plus going through the process State Fund went through in order to become a solid operation, he knows of the many reasons they became solid. The legislature gave them the tools to manage themselves as a private industry and their management took the State Fund to the fiscally sound operation it is today. Employers and employees also helped in the effort. He offered his support of the bill and its amendments.

Jerry Driscoll, AFL/CIO, discussed the study done during the 1989 legislative session. He thought it would be wise for the legislature to determine if the way the State Fund is run is feasible.

Sue Weingartner, Alliance of American Insurers, was in support of SB 304. She emphasized this bill does not ask the legislature to sell the State Fund. It simply directs that a study determining if a sale or partial sale would be in the best interests of the state employees and employers. It would provide an opportunity to examine this issue and conduct an objective study to determine if Montanans are, in fact, receiving fair treatment at the best rates and value for their money. Montana citizens deserve to know this. **Ms. Weingartner** discussed the Michigan fund, which sold about eight years ago, and the privatization of the Nevada state fund. She said three other state legislatures are currently looking at this very issue. She stated this is the right idea at the right time.

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Charles Brooks, Billings Chamber of Commerce, also watched the State Fund since 1989. He thought this was an opportunity and the time is right for a study. He commended the current management of the State Fund for the tremendous turnaround in the State Fund since 1989.

Aidan Myhre, Montana Chamber of Commerce, rose in support of the bill as well and also commended the management of State Fund for the great job they've done in turning it around. At the same time, she felt there are enough questions out there that people of Montana need to have answered.

Opponents' Testimony:

Matthew Cohn, Montana State Fund, said the new fund was created by the legislature in 1990. They believe a study of the feasibility of selling the old or new fund is a legislative policy decision. They do not oppose the study. They also believe a study will show that a competitive, three-way system is a cost-effective system of providing workers compensation insurance in a small market like Montana serving the needs of employers and employees by providing for the guaranteed market as well as facilitating a healthy, competitive marketplace. Their opposition to SB 304 was based on the process contained in the bill as introduced. **Mr. Cohn** emphasized that he was directing his comments to the bill as it was introduced. As introduced, the Governor is to determine if it is cost effective to sell all or a portion of the State Fund assets and liabilities. It is not clear whether this is an open process with meetings or only a report from the Governor without an opportunity for input. Meetings are not required in the bill just a determination by the Governor. While it is likely the Governor will hold meetings, there are parties very interested in this issue that will want and should have an opportunity to participate. By soliciting proposals in advance of legislative approval, there are many issues that may not get fully addressed. Should a sale be recommended, it will affect not only their 26K policyholders, but also Montana businesses. They were also concerned about the impacts on the thousands of individual employees who would have ongoing claims as well as concerns for what this will mean for their 256 employees. The bill says that the Governor may use the expertise of executive branch agencies and consultants, yet there are no provisions in it for funding. Without knowing the parameters of the feasibility study, it is hard to estimate the overall cost involved; however, it does appear that the cost for a study would be borne by the policyholders of Montana State Fund, which they believe is inappropriate. A legislative interim committee would probably be a more proper venue for this type of study. Should the new fund be sold, there would need to be provisions made for an assigned risk pool mechanism in law that the legislature would have to address. The resulting impacts on Montana businesses, both small and large, need to be thoroughly considered before that step would be taken. Montana comprises a mere four-tenths of one percent of the National Workers Compensation market. When times get tough in the insurance industry like they are today, carriers often find it necessary to retrench to concentrate their resources in their core markets. In the past several years, carriers have withdrawn from Montana, leaving Montana businesses with fewer available options for purchasing workers compensation coverage. During times like

these, the role of a competitive state fund takes on even greater significance. Montana State Fund exists to provide all businesses with competitively priced coverage and top-of-the-line service. Montana is home to the State Fund, and they were created by the legislature to serve the people of the state. Any study to sell the fund needs to be comprehensive, inclusive and thorough. **Mr. Cohn** offered to answer any questions. In answer to **CHAIRMAN DALE MAHLUM'S** question as to whether **Mr. Cohn** had received and read a copy of the amendments to the bill, **Mr. Cohn** answered he had seen them, but still had some concerns.

Roger McGlenn, Independent Insurance Agents Association of Montana, emphasized his organization's support of the competitive, three-way system in this state. He gave a brief history from their perspective. He believed the resources of the state of Montana would be better spent in strengthening the system than studying getting out of it.

Jacqueline Lenmark, American Insurance Association, stood in opposition to the bill as currently drafted. They strongly support a competitive, three-way compensation system and felt that any deviation from that system cannot be taken precipitously nor lightly. She understood that amendments had been proposed to the bill, but had not yet seen them. She raised concerns that the sole decision-making ability seemed to reside in the Governor's office without direction from the legislature about what sort of factors should be taken into consideration when that determination is made. They also had concerns that there was not a clear delineation of resources that any study might use in coming to the determination. **Ms. Lenmark** summarized her remarks by saying they would prefer not to see the bill. If the legislature determined that a study was necessary, they wanted to see a bill that gives better guidance to the committee of the goal and objective of the committee, how the decision should be made, and what information the decision should be made upon. They would prefer to see a DO NOT PASS on the bill. In closing, **Ms. Lenmark** stated she was willing to modify her comments once she had an opportunity to review the amendments.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA directed her question to **Ms. Lenmark**. Due to her work in the workers comp field, **SEN. COCCHIARELLA** asked how many companies are selling workers comp insurance in Montana. **Ms. Lenmark** guessed that are in excess of 300 or 400 that are licensed to sell workers compensation insurance; however, the number in practice selling in the market, she did not know.

SEN. COCCHIARELLA asked the same question of **Matthew Cohn**. After conferring with his colleague, they believed there are probably 20 or 30 active companies.

SEN. SAM KITZENBERG expressed his skepticism about studies. For his own clarification, he listed three problems he has with them for **SEN. JOHNSON**. The first was who picks the committee; the second was who pays for the study; and third, the amount of money set aside for studies isn't always enough to do a thorough study. **SEN. JOHNSON** stated that the amendments address his concerns.

SEN. DON RYAN asked **Mr. Cohn** if he thought it would be possible to get a chart for the newcomers to the legislature to see how the three-way system works in Montana, to which **Mr. Cohn** replied in the affirmative. **SEN. RYAN** also wanted to know if the systems in Michigan and Nevada were the same as Montana's. **Mr. Cohn** advised him that both states were very different than ours. Since 1990, nine states have created competitive, three-way systems.

SEN. SHERM ANDERSON wanted **Mr. Cohn** to share with the committee the percentage of the market share State Fund has in the state. **Mr. Cohn** said they currently have approximately 60 percent. His point of view on the discrepancy of the cost of the study and what would be involved in the process was that some assumptions have to be made. Following each step along, if you are going to study this issue, what tools would be needed, what information would be known from independent sources, how would that determination be made, and if you decided to sell it, where would you go. They anticipated there should be six meetings where outside experts would be flow in to give their testimony. They assumed you would need outside independent actuaries besides their own to look at their case reserves.

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Mr. Cohn went on to share what happened in Michigan and Nevada. He also listed the need for specialized attorneys, setting up what an assigned pool mechanism would look like. They also considered that there might be a survey needed of employers. There are about 40K business entities in the state and their views would need to be considered. The cost of outside actuarial study would be, according to their actuary, between \$100K and \$150K.

Mr. Cohn was asked by **SEN. MIKE SPRAGUE** if he felt it appropriate to pay for the study out of State Fund monies. **Mr. Cohn** stated his organization felt it was appropriate for policyholders to have to pay for it.

SEN. SHERM ANDERSON wanted to know **SEN. JOHNSON'S** vision for paying for the study. He felt it should, in fact, be paid for by the taxpayers through the old fund surplus, because they were the ones who brought about the change to the fund.

Closing by Sponsor:

SEN. JOHNSON told the committee it was their responsibility as representatives of the people of Montana to, on a continuing basis, watch over those things that are important to the people of Montana. He felt this was one of the most important subjects the committee members would come across. He pointed out that the amendments state that the 59th Legislature would make the decision, not the study committee nor the Governor. **SEN. JOHNSON** asked for a DO PASS recommendation from the committee.

EXECUTIVE ACTION ON SB 273

Motion/Vote: **SEN. ANDERSON** moved that SB 273 DO NOT PASS. Motion carried 8-2 with **COCCHIARELLA** and **RYAN** voting no.

EXECUTIVE ACTION ON SB 292

Motion/Vote: **SEN. COCCHIARELLA** moved that SB 292 DO PASS AS AMENDED, **EXHIBIT**(bus32a05) (SB029201.aem). Motion carried 10-0.

ADJOURNMENT

Adjournment: 10:37 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus32aad)